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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

(1) S.B. CIVIL WRIT PETITION NO. 7473/2002
M/s SINGHAL INDUSTRIES
Vs.
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE BHARATPUR

&

(2) S.B. CIVIL WRIT PETITION NO. 7474/2002
M/s SINGHAL INDUSTRIES
Vs.
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE BHARATPUR

DATE: 17.12.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. R.P. Garg for the petitioners.
Mr. Abhay Jain for
Mrs. Parinitoo Jain for the respondent.

Since both these writ petitions involve similar question of facts and law, therefore, they are being decided by this common order.

The facts of the case of *S.B.C.W. Petition No. 7473/2002* are taken as leading case. By way of this writ petition, the petitioner has challenged the impugned notice dated 28.03.2002 (Annexure-1) and the reasons for re-opening the case under Section 147 dated 30.04.2002 (Annexure-3) on the ground that the notices are against the facts available on record and law

applicable and the same deserve to be quashed and set-aside. It is further challenged that the notice under Section 148 of the Income Tax Act dated 28.03.2002 is served to the petitioner without issuing any notice and providing opportunity of hearing to the petitioner.

The petitioner has further challenged the impugned notice on the ground that the said notice is neither speaking nor any reasons have been disclosed by the respondent and the assessment was already completed in the case twice on 30.03.2000 and 20.03.2001 after perusal of all the material available on record. The respondent has no material for re-opening the case and as per the provisions of Section 148 of the Income Tax Act and settled preposition of law, there should be new material or information before initiating proceedings under Section 148 of the Income Tax Act.

On the other hand, the respondent has raised preliminary objections regarding maintainability of the writ petition as the petitioner has got alternative remedy of filing appeal before the Commissioner of Income Tax (Appeals) under Section 246 of the Income Tax Act against the order passed under Section 147 of the Income Tax Act. Further if aggrieved by the order of Commissioner of Income Tax (Appeal), the petitioner may approach before the Income Tax Appellate Tribunal

under Section 253 of the Income Tax Act and if any adverse order is passed by the Income Tax Appellate Tribunal, the same can be challenged under Section 260-A of the Income Tax Act before this Court and without availing the alternative efficacious remedy available to the petitioner, the present writ petition has been filed which is not maintainable.

Learned counsel for the respondent has further challenged the maintainability of the writ petition on the ground that the petition against the notice issued under Section 148 of the Income Tax Act is not maintainable as per the settled preposition of law as laid down by the Division Bench of this Court and the Hon'ble Apex Court as the Hon'ble Apex Court has observed that the High Court should not exercise extraordinary power vested under Articles 226 and 227 of the Constitution of India in the notice issued under Section 148 of the Income Tax Act.

In reply to the preliminary objections raised on behalf of the respondent, it is contended by the learned counsel for the petitioner that the writ petition is maintainable even against the notice issued under Section 148 of the Income Tax Act and placed reliance on the judgment rendered by the Division Bench of the Madhya Pradesh High Court in the case of **Satish**

Chandra Arya Vs. Income-Tax Officer, Special & Survey Ward Circle-I, Indore, 1984 (Vol.146) Income Tax Reports 334, wherein the Division Bench of the Madhya Pradesh High Court has held that ITO had no jurisdiction to issue notice to the assessee under Section 148 and the notice was liable to be quashed.

He also placed reliance on the judgment rendered by the Division Bench of the Gujarat High Court in the case of **Shri Vallabh Glass Works Ltd. Vs. Income-Tax Officer, Companies Circle VIII And Others, 1995 (Vol.212) Income Tax Reports 433**, wherein the Division Bench of the Gujarat High Court has observed that when the Act permits the filing of a revised return, it is expected to be considered by the assessing authority, if the same is filed before the order is made by it; otherwise the very purpose of giving such a right would be frustrated.

Learned counsel appearing for the respondent in support of his submissions with regard to maintainability of the writ petition, has placed reliance on the judgment rendered by the Division Bench of this Court in the case of **Assistant Commissioner of Income-Tax And Others Vs. Banswara Syntex Ltd., 2005 (Vol.272) Income Tax Reports 642**, wherein the Division

Bench of this Court has observed as under:-

"The assessing authority has jurisdiction to reopen the assessment under section 147 of the Income-Tax Act, 1961, by issuing notice under section 148 of the Act after four years from the end of the relevant year in case the assessing authority has reason to believe that on account of omission or failure on the part of the assessee to file the return or on account of failure on his part to disclose fully and truly all material facts necessary for assessment for that particular year, income had escaped assessment. The sufficiency of the reasons for forming the belief is not for the court to judge."

Similar view has been taken by the Division Bench of this Court in the case of **Udaipur Mineral Development Syndicate Pvt. Ltd. Vs. Assistant Commissioner of Income-Tax And Another, 2004 (Vol.269) Income Tax Reports 279**, wherein the Division Bench of this Court has held as under:-

Dismissing the appeal, that sanction for notice under section 148 of the Income-tax Act, 1961 had been granted by the Additional Commissioner. The Additional Commissioner was the officer superior in the hierarchy to the Joint Commissioner in the Department. Certainly, the superior officer in the hierarchy was competent to grant sanction for issuance of the notices to the assessee under section 148. It was clear from the findings of the single judge that it could not be said that the notice was ex facie a nullity or totally without jurisdiction. The

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alternative remedy of filing of the objections against show cause notice available to the appellant had been availed of. The notice could not be quashed."

Hon'ble the Apex Court in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors., (2003) 179 CTR Reports 11**, has held as under:-

"There is no justifiable reason to interfere with the order under challenge. When a notice under s. 148 is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices. The AO is bound to furnish reasons within a reasonable time. On receipt of reasons, the noticee is entitled to file objections to issuance of notice and the AO is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the AO has to dispose of the objections, if filed, by passing a speaking order, before proceeding with the assessment."

I have heard rival submissions of the respective parties and carefully perused the relevant provisions of law as well as the impugned notice issued under Section 148 of the Income Tax Act, which is under challenge in these writ petitions.

I have also carefully gone through the judgments referred by the respective parties.

To decide the preliminary issues which have been raised by the learned counsel for the respondent whether these writ petitions are maintainable against the notice issued under Section 148 of the Income Tax Act, as observed by the Hon'ble Apex Court in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. (supra)**, referred by the learned counsel for the respondent, that if any reason has not been assigned while issuing notice under Section 148 of the Income Tax Act, the petitioner is given liberty to raise the objection before the AO and on such eventuality, the AO has to dispose of the objections if filed by the petitioner by passing a speaking order before proceeding with the assessment.

In view of the ratio decided by the Hon'ble Apex Court in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. (supra)**, the petitioner was given liberty to raise objection which, admittedly, has not been raised by the petitioner and filed these writ petitions.

Therefore, in view of the ratio decided by the Hon'ble Apex Court in the case of **GKN Driveshafts (India) Ltd. Vs. Income Tax Officer & Ors. (supra)**, both these writ petitions are not maintainable as the petitioner has got alternative efficacious remedy and

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even the petitioner has got remedy to raise objections before the assessing authority, as held by the Hon'ble Apex Court in the aforementioned case.

Consequently, both the writ petitions fail being devoid of merit and the same are hereby dismissed.

The interim order dated 02.12.2002 granted in S.B.C.W. Petition No. 7473/2002 and dated 11.11.2002 granted in S.B.C.W. Petition No. 7474/2002 stand rejected.

The stay applications also stand dismissed.

(K.S. RATHORE),J.

/KKC/